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S.B. CIVIL MISC. APPEAL NO.1452/2006.
(M/s Hodal Singh Giri Raj Singh & Co. Vs. Usha Kumari & Ors.)
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S.B. CIVIL MISC. APPEAL NO.1476/2006.
(M/s Hodal Singh Giri Raj Singh & Co. Vs. Oti Bai & Ors.)
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Date of Order :: 06.12.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Rajesh Panwar with
Mr. S.K. Sankhla, for the appellant.
Mr. Surendra Surana, for the claimants-respondents.

These three appeals by the owner of the vehicle involved in the accident, though listed for admission, have been submitted against the common award dated 08.02.2006 made by the Motor Accidents Claims Tribunal, Sirohi respectively in Claims Cases Nos. 25/2004 (CMA No.1452/2006), 126/2004 (CMA No.1453/2006) and 50/2004 (CMA No.1476/2006); the matters relate to the same accident; the claimants in respective appeals have put in appearance in caveat; and during the course of submissions parties have arrived at a comprehensive settlement relating to all the claim cases. Hence, while dispensing with service on proforma respondent, the driver of the offending vehicle, these appeals are being disposed by this common order.

On 29.11.2003 at about 6.45 p.m., Girdhari Lal taking his wife Usha Kumari and brother-in-law Mahendra Kumar on his vehicle, Bajaj M-80, met with the accident on hitting against a truck-trailer bearing registration No. RJ 1 G 1708 on Highway near Swaroopganj. As a result of the accident, the riders of the moped sustained several injuries and Girdhari Lal and Mahendra Kumar succumbed to the injuries.

The claim applications aforesaid were submitted respectively by the wife, daughter and parents of the deceased Girdhari Lal (Claim Case No.25/2004); by the injured claimant Usha Kumari (Claim Case No.126/2004); and by the parents, brother and sister of the deceased Mahendra Kumar (Claim Case No.50/2004) claiming compensation under Section 163-A of the Motor Vehicles Act, 1988. Although the respective claim applications were submitted under Section 163-A of the Act, yet the Tribunal has proceeded to frame issues about responsibility towards accident (issues Nos. 1 and 2) too and after consideration of the entire evidence on record held that the accident occurred for unindicated parking of the truck in question on the road that resulted in the deceased Girdhari Lal driving the moped colliding with it.

Taking up quantification of compensation, in claim case No.25/2004 the Tribunal has accepted the age of the

deceased Girdhari Lal at 25-26 years and his average income at about Rs.3,000/- per month; and dependency of the claimants at Rs.2,000/- per month. Applying a multiplier of 18, the Tribunal has assessed pecuniary loss at Rs.4,32,000/- (24,000 x 18) and has allowed further Rs.20,000/- towards non-pecuniary loss, Rs.5,000/- towards funeral expenses and further Rs.5,000/- towards damage of the moped and thereby made the award in the sum of Rs.4,62,000/- in favour of the claimants. In claim case No.126/2004, after noticing two grievous injuries suffered by the claimant Usha Kumari, the Tribunal has allowed Rs.10,000/- towards the injuries and Rs.16,500/- towards treatment expenditure as per bills produced. The Tribunal has further proceeded to add Rs.20,000/- towards special diets, transportation and attendants and thereby assessed the loss for the injured claimant at Rs.46,500/-. In claim case No.50/2004, taking the age of the deceased at 12 years, the Tribunal has taken his notional income at Rs.15,000/- per annum and with application of multiplier of 15 has assessed the loss for the claimants at Rs.2,25,000/- (15,000 x 15). The Tribunal has also allowed interest @ 6% per annum to the respective claimants from the date of filing of their claim applications. It appears that the vehicle in question was not carrying insurance coverage and the aforesaid awards have been made against the driver and

owner of the vehicle involved in the accident.

Owner of the vehicle has submitted these appeals seeking to question the findings of the Tribunal and the claimants have put their appearance in respective appeals in caveat.

Learned counsel for the parties during the course of submissions pointed out that the parties have reached a consensus for settlement of these matters and have placed on record a compromise agreement that reads thus:

> "That in the above mentioned appeals during the course of arguments the parties in the spirit of compromise have agreed to settle the dispute pending between them in the manner as mentioned below:-
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> In S.B. Civil Misc. Appeal No.1452/06 the appellant shall deposit the total compensation amount in favour of Usha Kumari Rs.4,62,000/- without interest.
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> In S.B. Civil Misc. Appeal No.1453/06 the appellant shall deposit Rs.26,500/- as full and final compensation without interest in favour of respondent claimants.
>
> In S.B. Civil Misc. Appeal No.1476/06 the appellant shall deposit Rs.2,25,000/- without interest in favour of the respondents claimants.
>
> It is also agreed that the amount already deposited by the appellant regarding the above mentioned cases, shall be adjustable. The appellant shall deposit the amount in pursuance of this compromise before the learned tribunal within 45 days from today."

In terms of the said compromise, in Claim Case No.25/2004 (CMA No.1452/2006) and claim case No.50/2004 (CMA No.1476/2006), the principal amount awarded by the Tribunal is retained, however, the interest awarded by the Tribunal in favour of the claimants is given up. In claim case No.126/2004 (CMA No.1453/2006), the claimant has agreed on deduction of the amount from Rs.46,500/- to Rs.26,500/- and has agreed to accept the same without interest. It has also been agreed that the amount already deposited shall be adjustable towards the amount payable under the modified awards in respective claim cases and the appellant shall deposit the remaining amount with the Tribunal within 45 days from today.

Having examined the impugned award and the terms of settlement, this Court is satisfied that the compromise so arrived at remains just and proper; and represents admissible amount of compensation to the respective claimants in their respective claim cases.

It is noticed that the awards on quantification of compensation in respective claim cases stand on a bit higher side and ought to have been made in conformity with the requirements of Second Schedule to the Motor Vehicles Act, 1988. In claim case No.25/2004, the figure of pecuniary loss

even on the basis of calculation adopted by the Tribunal could not have been more than Rs.4,08,000/- as per the Second Schedule to the Act and the amount towards non-pecuniary loss and so also funeral expenses has been awarded higher than admissible under the said Schedule. Similarly, in claim case No.126/2004, the injured claimant has been allowed Rs.20,000/- towards attendants and special diets etc. that does not appear justified. In claim case No.50/2004 in relation the unearning 12 year old boy, taking Rs.15,000/- per annum as notional income and without deduction of one-third as required by Second Schedule application of multiplier of 15 also does not appear proper. Viewed in this light, this Court is satisfied that the claimants have been reasonable in giving up the component of interest @ 6% per annum on the principal amount awarded by the Tribunal and the injured claimant has further been reasonable in giving up the extra component of Rs.20,000/- in her claim case.

With removal of the component of interest of about 34 months from the date of filing of the respective claim cases till today and looking at the amount otherwise reasonably admissible for the claimants, this Court is satisfied that the compromise agreement arrived at by the parties remains fully justified and deserves approval.

The appellant has sought 45 days' time for depositing the remaining amount payable under the modified award. Though this period appears to be wee bit extra but looking to the substantial amount required to be deposited, it seems justified that the appellant be provided such time of 45 days from today to deposit the remaining amount. However, it appears in the interest of justice and in the fitness of things to enjoin upon the appellant to adhere to the terms of compromise and, therefore, it is made clear that modification of the respective awards as per agreement shall remain subject to its compliance by the appellant within 45 days from today else the award as made by the Tribunal shall remain in force.

Accordingly, these appeals stand partly allowed in terms of the compromise arrived at between the parties subject to the observations supra and it is ordered:

(a) in Claim Case No.25/2004 (CMA No.1452/2006), the claimants are awarded compensation in the sum of Rs.4,62,000/- without interest;

(b) in Claim Case No.126/2004 (CMA No.1453/2006), the claimant is awarded compensation in the sum of Rs.26,500/- without interest; and

(c) in claim case No. 50/2004 (CMA No.1476/2006), the claimants are awarded compensation in the sum of Rs.2,25,000/- without interest.

(d) The amount payable under the modified award shall be deposited by the appellant within 45 days after adjusting the amount already deposited; and

(e) upon deposit, the Tribunal shall proceed with apportionment and disbursement of the amount as contemplated under the impugned award.

(f) However, in the event of the appellant failing to comply with the requirements of this Order, these appeals shall stand dismissed without any further reference to the Court.

(DINESH MAHESHWARI), J.

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